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10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA  
12 LAS VEGAS DIVISION  
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14 AMIR F. ABD-ELMALEK,

15 Plaintiff,

16 v.

17 ANDREW SAUL,  
Commissioner of Social Security,

18 Defendant.  
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No. 2:16-cv-02509-APG-EJY

NOTICE OF VOLUNTARY REMAND

1 In response to Plaintiff's Motion to Remand (ECF No. 29) and this Court's Order (ECF  
2 No. 30), Defendant files his Notice of Voluntary Remand. Defendant agrees with Plaintiff that  
3 remand to the Commissioner of Social Security is proper pursuant to 42 U.S.C. § 405(g), sentence  
4 four. Upon remand, the Appeals Council will remand the case to an administrative law judge  
5 (ALJ) for a new decision. The Appeals Council will instruct that the ALJ shall reevaluate  
6 Plaintiff's application under the sequential evaluation process, including evaluating Plaintiff's  
7 symptom allegations, giving specific reasons for the weight the ALJ gives to those allegations,  
8 and evaluating opinion evidence including medical opinions and statements from Plaintiff's wife.

9 Further administrative proceedings are proper in this case because of significant conflicts  
10 between the medical source opinions, raising serious doubt of disability. Specifically, Plaintiff's  
11 treating sources disagreed as to whether Plaintiff was disabled, with one treating physician, Zeid  
12 Kayali, M.D., concluding that he was not disabled (AR 1219) and that he was able to lift and  
13 carry up to 20 pounds (AR 652), consistent with an opinion from State agency physician William  
14 McCollum, M.D. (AR 716-18). Two other treating physicians, Michael Charlton, M.D., and  
15 Dennis Jensen, M.D., provided check-the-box forms indicating greater limitations (AR 1294-98,  
16 1309-13). The responsibility for resolving this conflict rests with the ALJ, and requires remand  
17 for further administrative proceedings. *See Leon v. Berryhill*, 880 F.3d 1041, 1047 (9th Cir.  
18 2018) (suggesting that remand for payment is not proper where a record contains "inconsistencies  
19 in the claimant's primary physician's medical opinions"); *Dominguez v. Colvin*, 808 F.3d 403,  
20 408-09 (9th Cir. 2016) (remanding for further proceedings because of conflicts between medical  
21 source opinions). Therefore, this Court should remand for further proceedings.

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1 Counsel for Defendant contacted Plaintiff by telephone (using the telephone number for  
2 Plaintiff available on the docket sheet) on May 7, 2020, and left a voice mail, and again attempted  
3 to contact Plaintiff by telephone on May 11, 2020, but has not received a response. Therefore,  
4 Defendant cannot state Plaintiff's position on this Notice of Voluntary Remand.

5 Respectfully submitted,

6 NICHOLAS TRUTANICH  
7 United States Attorney

8 DATE: May 11, 2020

By s/ Daniel P. Talbert  
9 DANIEL P. TALBERT  
10 Special Assistant United States Attorney

11 Attorneys for Defendant

12 ~~[PROPOSED]~~ ORDER

13 Good cause appearing, this case is remanded to the Commissioner of Social Security for  
14 further administrative proceedings.

15 DATED: May 12, 2020

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17 HON. ELAYNA J. YOUCHAH  
18 UNITED STATES MAGISTRATE JUDGE  
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